CF0000060284

(2)

Single Bench (Criminal)

BEFORE THE HIGHCOURT OF JUDICATURE AT JABALPUR (M.P.).

CRIMINAL APPEAL NO. 1316 OF 1998.

APPELLANT : (IN JAIL)

VINAY SINGH S/o Rajnarayan Singh,
aged about 32 years,
Resident of Village Nammakala,
Police Station Ambikapur, Distt. Surguja,MP.

VERSUS

RESPONDENT :

The State of Madhya Pradesh,
Through Police Station Ambikapur,
District Surguja(M.P.).

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE

8770

Filed on 11.6.98
by Shri M.Mishra Advocate

CONVICTION	SENTENCE
U/S 307 of I.P.C.	R.I. for 10 years, and fine of Rs. 5,000/- and in case of default R.I. for 3 yea-rs.

Bla. A.R.

The appellant named above begs to prefer this appeal against the judgment and finding dated 17.4.98, passed by the IInd Additional Session Judge, Ambikapur, District Surguja in S.T. No. 97/95(State vs- Harjeet Singh) convicting and sentencing the appellant as mentioned above hence this appeal on the following facts and grounds :-

Certified Copy of Petition with Annexures

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1316/1998

Vinay Singh

Vs.

The State of Madhya Pradesh (now State of Chhattisgarh)

Post for Judgment: 18.08.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

18.08.2006

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.1316/1998

Vinay Singh

Vs.

The State of Madhya Pradesh (now State of Chhattisgarh)

Shri M.K. Beg, learned counsel for the appellant
Shri M.P.S.Bhatia, learned Panel Lawyer for the State

JUDGMENT

(Delivered on this 18th day of August 2006)

Appellant-Vinay Singh is aggrieved by his conviction under Section 307 I.P.C. and the sentence of rigorous imprisonment for 10 years and fine of Rs.5000/- and in default to undergo additional rigorous imprisonment for three years awarded by Shri B.K.Jatav, 2nd Additional Sessions Judge, Ambikapur in Sessions Case No.97/1995 vide judgment dated 17.4.1998.

2. Brief facts are that the appellant along with Harjit Singh, Shivaji Rai and Anil Mishra was prosecuted under Section 307 read with Section 34 I.P.C. for attempting to commit murder of Head Constable Prahlad on 7.6.1991 at 9.00 P.M. at Gandhi Chowk, Ambikapur. It was alleged that the appellant herein had, in furtherance of the common intention of the aforesaid co-accused assaulted Head Constable Prahlad Mishra by a sword on the eye-brow and nose with intent to cause his death.

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3. F.I.R. was lodged by Head Constable Prahlad P.W.1 at Police Station Ambikapur on 7.6.1991 i.e. the date of occurrence vide Ex.P.1. Dr. R.K. Bajaj P.W.2 found the following injuries on Head Constable Prahlad Mishra:-

1. Incised injury 3/4" x 1/4" over left eye brow laterally.

2. Incised injury 1/4" x 1/4" over the right side of nose.

Fresh bleeding was present from both. In the opinion of Dr. R.K.Bajaj the injuries were simple in nature and were caused by sharp object. During investigation, the weapon of offence i.e. sword could not be recovered.

After completion of investigation, the appellant along with co-accused Harjit Singh, Shivaji Rai and Anil Mishra was prosecuted.

4. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 7 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted the appellant under Section 307 I.P.C. and sentenced him as aforesaid in paragraph 1 while acquitting the co-accused Harjit Singh, Shivaji Rai and Anil Mishra.

5. Shri M.K.Beg, learned counsel for the appellant has assailed the impugned judgment on the ground that it is not established by the prosecution that the appellant was the perpetrator of the crime since Head Constable Prahlad Mishra P.W.1 had admitted to have mentioned the name of the appellant in the F.I.R. only on being informed by the local people who were present at the spot. No such independent witness was examined by the prosecution. The testimony of eye

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witness Constable Marut Mahendra Singh P.W.3 also did not show the complicity of the appellant for the offence. No identification parade was held. Another eye witness Platoon Commander R.K.Singh P.W.6 also stated that he could not identify appellant-Vinay Singh as the person who had assaulted Head Constable Prahlad Mishra. On these premises, it was urged that the conviction and sentence awarded by the learned trial Judge was liable to be set aside. On the other hand, Shri M.P.S.Bhatia, learned Panel Lawyer argued in support of the impugned judgment and contended that the sword could not be recovered during investigation since the appellant was absconding and surrendered before the trial Court on 11.11.1992

6. Having considered the rival submissions, I have perused the record of Sessions Case No. 97/95 with utmost circumspection. The testimony of Dr. R.K.Bajaj P.W.2 clearly shows that injuries sustained by Head Constable Prahlad Mishra were simple injuries. No such opinion was expressed by him that if not complicated, the injuries were sufficient in the ordinary course of nature to cause death. It is also pertinent to note that depth of injuries found on the left eye-brow and right side of nose was not mentioned by Dr. R.K.Bajaj.

7. Constable Marut Mahendra Singh P.W.3, an eye witness, stated in paragraph 3 of his testimony that he could not identify the appellant or the three co-accused persons. In paragraph 6, he has reiterated that he could not say as to who had assaulted Head Constable Prahlad Mishra by sword. Platoon Commander R.K.Singh P.W.6, another eye witness, also stated that he could not identify the assailant who had assaulted Head Constable Prahlad Mishra and he had only learnt that the appellant and his associates had hurled abuses on

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the Police. In paragraph 3 of his testimony, he expressed his inability to identify the appellant as the perpetrator of the crime.

8. Head Constable Prahlad Mishra P.W.1 admitted in paragraph 8 of his testimony that there was no quarrel with the appellant and he had never met or spoken to the appellant before the date of occurrence. He admitted that upon being informed by the local people, he learnt that the name of the accused was Vinay Singhand on that basis stated that appellant-Vinay Singh had assaulted him. In paragraph 12 also, at first he admitted that the appellant was not present on the road on which he was going. Although in paragraph 2, he stated that Vinay Singh ran to assault him by a sword and assaulted him by a sword several times, but every time he withdrew and saved himself, and in this manner, he sustained injury only by the tip of the sword on his fore-head and nose, yet in paragraph 13, on being confronted with the omission in the F.I.R. Ex.P.1, he clearly stated that he did not remember whether he had mentioned this fact in the F.I.R. or not.

9. The prosecution did not examine any independent witness who had seen the occurrence or had told Prahlad Mishra about the identity of the person who had assaulted him. The sword could also not be recovered from the appellant although a prompt report was lodged by Head Constable Prahlad Mishra at P.S. Ambikapur vide Ex.P.1. It is not disputed that no test identification was held to get the appellant identified by Head Constable Prahlad Mishra. The testimony of Head Constable Prahlad Mishra becomes doubtful since no *mens rea* is attributed by him to the appellant for assaulting him. The nature of injury sustained by Head Constable Prahlad Mishra and his testimony

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that as he withdrew to save himself only the tip of the sword came in contact with his eye brow and nose is also rendered doubtful.

10. Having thus considered the evidence led by the prosecution in its entirety, the appellant is, in my considered opinion, entitled to benefit of doubt. In the result, this appeal is allowed. Conviction of the appellant under Section 307 I.P.C. and the sentence awarded thereunder are set aside. The appellant is acquitted of the charge under Section 307 I.P.C. after giving him the benefit of doubt. The appellant shall be set at liberty forthwith, if not required in any other case.

Sd/-
Dilip Raosaheb Deshmukh
Judge

18 .08.2006